

GOVERNMENT SHUTDOWN:

QUESTIONS AND ANSWERS FOR FBI EMPLOYEES

This document provides FBI employees with basic information and guidelines about the federal government shutdown and the related furlough of employees. Since certain information and guidelines may change as decisions on the federal budget are made, please periodically check for any updates to keep current. Thank you.

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General

Q1. Where do I find information about the status of the federal government shutdown and about when I should return to work while I am in a furlough status?

A1. Contact the HRD Call Center, (202) 324-3333. A recorded message will be updated daily with the status of the shutdown. Employees should also listen to public broadcasts to determine if the federal government is still shut down. Once employees hear that the government shutdown has ended, employees are expected to report to work on their next regular duty day.

Q2. What is a “furlough”?

A2. A “furlough” is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

Q3. What type of furlough is it?

A3. A "shutdown" furlough. In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down those activities that are not excepted by Office of Management and Budget (OMB) standards.

Q4. For furloughs necessitated by lapsed appropriations, is an agency required to provide 30 calendar days’ advance written notice and an opportunity to respond prior to issuing a decision to furlough?

A4. No. OPM's regulations provide for emergency adverse action furlough without the necessity for advance written notice proposing the action. Section 752.404 (d)(2) of 5 CFR provides:

The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or sudden emergencies requiring immediate curtailment of activities.

OPM's position that this regulation be applied to lapsed appropriations was upheld by the Federal Circuit in *Horner v. Andrzejewski et. al.*, 811 F.2d 571 (Fed. Cir. 1987).

Q5. In the event of lapsed appropriations, can an employee be furloughed without first receiving a written notice of decision to furlough?

A5. Yes. While an employee must ultimately receive a written notice of decision to furlough, it is ***not required*** that such written notice be given prior to effecting the furlough. Issuance of prior written notice is preferable, but when prior written notice is not feasible, then any reasonable notice (telephonic or oral) is permissible.

Employee Coverage

Q6. What is the difference between an "excepted employee" and an "emergency employee?" (Note: an "excepted employee" is not to be confused with an employee in the excepted service.)

A6. The term "*excepted employee*" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.

The term "*emergency employee*" is used to designate those employees who must report for work in emergency situations--e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or that require agencies to close all or part of their activities.

Q7. If an employee is furloughed, can that employee be recalled during the government shutdown by the division management?

A7. Depending on the length of time the government is shut down, furloughed employees may be recalled by their division/office management, as necessary, as a result of newly identified emergency activities. In the event of a recall, employees should be prepared to report to duty within a reasonable period of time upon notification.

Q8. If, during a lapse in appropriations, federal agencies are operating under an "unscheduled leave" policy because of emergency weather conditions, which employees should report for work?

A8. *Excepted* employees are required to report for work on time under these circumstances. Employees are reminded that, during a lapse in appropriations, all affected employees must be either (1) at work performing excepted activities (excepted employees) or (2) in a furlough status. Therefore, division management may change the status of employees as additional needs arise. In addition, if an excepted employee is unable to report for work because of emergency conditions, he or she must be placed in a furlough status until such time as the employee reports for work.

Q9. How do I know that I have been placed in a furlough status?

A9. Your division/office management will notify you and you will be provided with a letter, which you must sign and date (in acknowledgement), stating that you have been placed in a nonpay, nonduty (i.e., furlough) status. HRD will retain the signed letter, although you may have a copy of it.

Q10. How do I know if I am excepted from a furlough?

A10. Your division/office management will notify you (verbally or by email) that you have been excepted from a furlough.

Q11. Are individuals appointed by the President subject to furlough?

A11. Individuals appointed by the President, with or without Senate confirmation, who otherwise are not subject to 5 U.S.C. 6301 and attendant regulations governing leave in the federal service, are not subject to furlough. The salary of such a Presidential appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the Presidential appointee cannot be placed in a nonduty, nonpay status. If a Presidential appointee, however, chooses to be in a nonpay status, he/she may return part of his/her salary to the employing agency, provided that the agency has authority to accept gifts, or to the Treasury. Regardless of the Presidential appointee's choice, his/her entire salary is recorded for tax purposes. The following exception must be noted: former career Senior Executive Service (SES) appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c), are subject to furlough at the discretion of the agency.

Q12. What about persons working for federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA)?

A12. The specific authority for furloughing persons who are working under mobility agreements pursuant to the IPA, either inside the federal government or with other organizations, will depend upon the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- Personnel from non-federal organizations on appointments to the federal government are subject to furlough in the same manner as other employees.
- Personnel on detail to federal agencies from non-federal organizations may continue working, provided that the non-federal organizations pay the total costs of the detail.
- Personnel on detail to federal agencies from non-federal organizations that share part of the costs of detail may continue to work if the federal portion of the cost was obligated from prior appropriations at the time of the IPA mobility agreements. In the event that a furlough takes place in the second year of the agreement at which time no funds are appropriated, the assignment should be terminated.
- Personnel on detail to federal agencies from non-federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

Q13. Would employees who are detailed or assigned outside the FBI during part, or the entire period, of furlough be subject to furlough?

A13. Employees on a reimbursable detail from the FBI would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, these employees would be subject to furlough. The FBI may prorate the required furlough time for employees being paid by the outside organization during only part of the furlough period. Federal employees assigned to non-federal organizations and

who are on leave without pay from their federal positions may continue working during a furlough period.

Q14. How is the number of furlough hours for alternative work schedule (AWS) employees determined during a "shutdown" or "emergency" furlough? Can an employee reschedule a nonworkday that occurred during a furlough?

A14. Employees would be furloughed for the number of hours they were scheduled to work on the days for which there was a lapse in appropriations. Since FBI policy dictates that employees' schedules must be established in advance of the administrative work week, an AWS nonworkday scheduled to occur during a lapse in appropriations should not be changed after the administrative work week begins.

Q15. If I am an employee who has veterans preference, what are my rights if I have been placed in a furlough status?

A15. Employees in the excepted service who have veterans preference may appeal to the Merit Systems Protection Board (MSPB) if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. If an employee has the right of appeal to MSPB and wishes to appeal this action to the MSPB, the employee must file the appeal within 30 calendar days after the effective date of his/her furlough. If the employee wishes to file an appeal, a copy of the MSPB regulations, appeal form and the address of the MSPB Regional Office having jurisdiction are available at www.mspb.gov.

Standards of Conduct, Outside Employment and Unemployment Compensation during Furlough

Q16. May employees take other jobs while on furlough?

A16. Even while on furlough, an individual is an employee of the government. Therefore, the Executive Branch-wide standards of ethical conduct (the standards), at 5 CFR Part 2635, which include rules on outside employment, continue to apply to employees on furloughs. Additionally, there are statutes that prohibit certain outside activities. Employees who are furloughed may request outside employment consistent with FBI policy.

Q17. May an employee volunteer to do his or her job on a nonpay basis during a furlough period?

A17. No. Unless otherwise authorized by law, the FBI may not accept the voluntary services of an individual. (31 U.S.C. 1342)

Q18. May an employee work on a furlough day in exchange for taking a day off at another time for religious observances?

A18. No. The statute that permits employees to take compensatory time off for religious observances (5 U.S.C. 5550(a)) does not authorize an agency to accept the voluntary

services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

Q19. Are employees entitled to unemployment compensation while on furlough?

A19. It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Employees should submit their questions to their appropriate state office where their work duty station is located.

- Maryland: www.dllr.state.md.us **or** (410) 949-0022
- Virginia: www.vec.virginia.gov **or** (866) 832-2363
- District of Columbia: www.does.dc.gov **or** (877) 319-7346
- West Virginia: www.wv.gov **or** (304) 558-2624

Pay and Deductions from Pay

Q20. If a furlough begins during the middle of a pay period due to a lapse of appropriations, will employees receive pay for the portion of the pay period worked prior to the furlough effective date?

A20. Under the current Office of Management and Budget (OMB) guidance, yes, employees will receive pay for the hours worked. The minimum number of payroll staff necessary for this process will be excepted from furlough for the minimum time required to process pay, including processing pay for the portion of the pay period prior to the government shutdown.

Q21. As a furloughed or excepted employee, will I be paid for work performed during a government shutdown?

A21. Agencies will incur obligations to pay for services performed by excepted employees during a lapse in appropriations, and those employees will be paid after Congress passes and the President signs a new appropriation or continuing resolution. Congress will determine whether furloughed employees receive pay for the furlough period.

Q22. When an employee's pay is insufficient to permit all deductions to be made, what is the order of withholding precedence?

A22. OPM has set the order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions. Please review the [OPM Order of Precedence](#). Please be advised that due to the reduction of pay, employees are encouraged to contact institutions about the fact that their existing allotments may not be honored. If the full amount of the voluntary allotment cannot be honored from an employee's pay, it will not be deducted. When the shutdown ends, in those cases where allotments could not be deducted, it will be the employee's responsibility to ensure that the allotment is caught up.

- Q23. Can employees obtain a loan from their Thrift Savings Plan (TSP) account while furloughed? What happens if an employee has a TSP loan and is placed in a nonpay status?**
- A23.** According to [TSP Fact Sheet 11-5 Impact of a Federal Government Shutdown on the Thrift Savings Plan](#), dated March 4, 2011, employees may be eligible to obtain a loan from their TSP account while furloughed. As to current TSP loans, employees should refer to the same Fact Sheet for more information. This issuance is available from the TSP website at <http://www.tsp.gov/>. Employees can reach TSP at (1-877) 968-3778.

Service Credit for Various Purposes

- Q24. Is furlough or leave without pay (LWOP) considered a break in service?**
- A24.** No, both situations mean the employee is in a nonpay, nonduty status for those days/hours. However, extended furlough or LWOP may affect the calculation of creditable service for certain purposes. (See Q26.)
- Q25. To what extent does nonpay status affect civil service benefits and programs?**
- A25.** Nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) on federal employee benefits and programs vary based on current law and regulation. For additional information, see OPM's fact sheet on the "Effect of Extended Leave Without Pay (or Other Nonpay Status) on Federal Benefits and Programs" as http://www.opm.gov/oca/leave/HTML/LWOP_eff.asp.

Retirement and Insurance Benefits

- Q26. When a furlough occurs during the three years of service prior to retirement, what effect will time in a furlough status have on an employee's high-3 average?**
- A26.** Generally, there will be no effect on the high-3 average unless a furlough causes the employee to be in a nonpay status for more than 6 months during the calendar year.
- Q27. Are the retirement rules concerning the effect of a furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?**
- A27.** Yes.
- Q28. What happens if employees cancel Federal Employee Health Benefit (FEHB) coverage while in a nonpay status in order to avoid the expense?**
- A28.** Unlike other types of non-pay status, employees in a non-pay status due to a lapse of appropriations (shutdown furlough) will not have the opportunity to terminate or cancel FEHB coverage. The employee will remain covered; the enrollee share the FEHB premium will accumulate and be withheld from pay upon return to pay status.

Q29. What will happen to employees who would have retired during a shutdown?

A29. For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, when the lapse in appropriations ends, the FBI will make the retirement effective as of the date requested. The retirement request may be informal (such as a letter requesting retirement) and can be either mailed or personally submitted to the Human Resources Division, Retirement Unit (RU) (even if put under the main RU door). Any additional required paper work, such as the formal retirement application form, may be completed when the government reopens. No time spent by the retiree in such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the FBI.

Some employees may request retirement retroactive to a date prior to submission of the request. The Comptroller General (CG) has issued guidance permitting retroactive personnel actions (including retirements) only under limited enumerated circumstances. It will be up to the Human Resources Division to determine in each case whether the OPM's requirements and the CG's guidance have been met.

At 58 Comp. Gen. 51, at 53 (1978), the Comptroller General stated:

As a general rule a personnel action may not be made retroactive so as to increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented a personnel action from being effected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or (3) has deprived the employee or a right granted by statute or regulation.

Q30. Will my health benefits continue while the government is shut down?

A30. FEHB enrollment continues for up to 365 days in a nonpay status. The government contribution continues while employees are in a nonpay status. The government also is responsible for advancing from salary the employee's share. An employee's premiums will accumulate and be withheld from his or her pay upon returning to duty.

Q31. Will an employee continue to be covered under the Federal Employee Health Benefits (FEHB) program if the agency is unable to make its premium payments on time?

A31. Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

Q32. If an employee submitted a new application or a change to his/her health insurance plan (e.g. because of a Qualifying Life Event) and the paperwork was not processed by the agency because of a shutdown furlough, how would the employee seek services or coverage?

- A32. New enrollments or changes in enrollment due to a Qualifying Life Event do not take effect until the employee has been back in pay status for any part of the prior pay period.
- Q33. What happens to an employee's Flexible Spending Account (FSAFEDS) coverage if furloughed?**
- A33. Payroll deductions will cease for any employee who does not receive pay. The employee remains enrolled in FSAFEDS, but eligible health care claims incurred during a non-pay status will not be reimbursed until the employee returns to a pay status and allotments are successfully restarted.
- Q34. What happens to an employee's Federal Long Term Care (FLTCIP) Program coverage if furloughed?**
- A34. Payroll deductions will cease for any employee who does not receive pay. Coverage will continue so long as premiums are paid. If Long Term Care Partners does not receive payment for three consecutive pay periods, it will begin to direct bill the enrollee.
- Q35. What happens to an employee's Federal Dental and Vision (FEDVIP) Program coverage if furloughed?**
- A35. Payroll deductions will cease for any employee who does not receive pay. BENEFEDS will generate a bill to enrollees for premiums when no payment is received for two consecutive pay periods.

Requests for Leave During Furlough

- Q36. If employees request paid leave--i.e., annual, sick, court, military leave, or leave for bone marrow or organ donation--after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough? If an agency has already approved requests for these categories of paid leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?**
- A36. The answer to both questions is yes. All paid leave during the government shutdown is cancelled. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations all paid leave during a furlough must be cancelled and employees must be either (1) at work performing excepted activities or (2) furloughed.
- Q37. May *excepted* employees take previously approved paid leave during a furlough caused by a lapse in appropriations--i.e., a "shut-down" furlough? May *excepted* employees be granted new requests for paid leave during a lapse in appropriations?**
- A37. No. When an employee is not at work and performing the duties determined by the division/executive management to be allowable activities in compliance with

the Antideficiency Act, he or she cannot be in a paid leave status. Therefore, agencies must take one of the following actions:

- 1) cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or
- 2) furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough whenever the employee's services are required for excepted activities.

If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered absent without leave (AWOL) and may be charged with insubordination.

Q38. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during the furlough, does the leave count towards the 12-week entitlement to FMLA leave?

A38. An employee who is on approved leave without pay (LWOP) under the FMLA on days that coincide with the period of furlough will continue to be charged LWOP. An employee on LWOP under FMLA during a shutdown furlough may not later substitute paid time off for the days of LWOP. The LWOP taken under the FMLA is not part of the 12-week entitlement.

However, an employee who was scheduled during the furlough to take *paid* leave under the FMLA (i.e., an employee chooses to substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA) must be placed on furlough instead. (See Q37) Since the paid leave was cancelled, the period of absence may not be used to reduce the 12-week entitlement to FMLA leave.

Leave Without Pay (LWOP) in Lieu of Furlough

Q39. If an employee is scheduled to take approved leave without pay (LWOP) during a “shutdown” furlough, should the employee continue to be charged LWOP during the period of furlough?

A39. Yes. Furloughed employees scheduled to take preapproved LWOP during a "shutdown" furlough will continue to be charged LWOP during the furlough period, unless the agency cancels the approved LWOP prior to the beginning of the furlough period. If the approved LWOP was scheduled to end before the furlough ended, the employee must be placed on furlough for the remainder of the furlough period unless later designated as an excepted employee.

Continuation of Pay (COP)

Q40. How is Continuation of Pay (COP) under the Federal Employees' Compensation Act affected by a government shutdown?

A40. The Department of Labor's Office of Workers' Compensation Programs which administers the Federal Employees' Compensation Act (FECA) advises that, in the event of a Government shutdown, an employee who is disabled due to his or her injury is to be maintained in COP status during the shutdown unless the agency does not have monies available to pay salary during the shutdown but the agency's budget is subsequently restored in such a way as to allow for retroactive payment of salary during the shutdown period, the employee should receive COP for any period of disability that occurs within the shutdown. In the event an agency is legally unable to pay COP to an employee because of a lapse in appropriations, the employee may file a claim for regular FECA wage loss compensation for that period.

Q41. Are employees who are injured while on furlough or leave without pay (LWOP) eligible to receive workers' compensation?

A41. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

Payments Upon Separation from Federal Service

Q42. If there is a "shutdown" furlough as a result of a lapse in appropriations, may employees who are separating prior to the expiration of the continuing resolution receive a lump-sum payment for their unused annual leave? Are the funds paid out of the current continuing resolution or the new appropriation's monies?

A42. The obligation of funds for a lump-sum annual leave payment is triggered by an employee's separation from federal service. For example, if an employee separates on September 29, 2013, the money to pay the lump-sum annual leave payment is covered under the FY2013 continuing resolution.

If an employee separates during a lapse in appropriations, the lump-sum annual leave payment must be delayed until enactment of an appropriation that would allow the obligation and payment of funds for this purpose.

Q43. How are separated employees' entitlements to severance pay affected by a lapse in appropriations?

A43. Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the government of the United States. (Severance pay is suspended or terminated when the individual is reemployed by the federal government.) Severance pay is paid at the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued continuing entitlement to severance pay. If the recipient is reemployed by the federal

government during a pay period, he or she is entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g., 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period).

Thus, in the case of a lapse in appropriations, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as pay for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of agency operations, severance pay covering days before the lapse may also be processed.

After a lapse in appropriations begins, a separated employee continues to accrue entitlement to severance pay on a day-to-day basis. However, no funds may be authorized for severance payments for days during the lapse until an appropriation is enacted.

Additional information on severance pay can be found at www.opm.gov.

Performance Awards and Within-Grade Increases

Q44. If performance management plans require the payment of performance awards to employees, can the payment be delayed until after a furlough?

A44. Yes. Neither law nor regulation requires agencies to pay performance awards (5 U.S.C. Chapters 43 and 45 and 5 CFR 451.104(a)(3)). If performance management plans require the payment of performance awards, payment may be delayed until after the furlough when funds are available.

Q45. Can within-grade or step increases for employees be denied or delayed?

A45. Within-grade and step increases for General Schedule (GS) and wage employees are **awarded** on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a GS employee in step 1, 2, or 3 of the grade who is furloughed for more than 2 work weeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406 (b)).